court, in fixing the punishment in the first instance, to pass sentence for so short a time does not render the communted sentence unlawful or ineffective. See *Ex parte Harlan* (C. C. 1909) 180 Fed. 119, 127; aff'd 218 U. S. 442, 31 Sup. Ct. 44. The plaintiff, therefore, upon serving eight years, was eligible to parole. *Duehay* v. *Thompson* (C. C. A. 1915) 223 Fed. 305. Furthermore, an act of clemency should be construed liberally in favor of the beneficiary. See *Lee* v. *Murphy* (Va. 1872) 22 Grat. 789, 800. Any difficulty, therefore, raised by the governor's use of the technical word "commute" should be ignored, and the instrument should be construed as a conditional pardon. But *cf. Ex parte Janes* (1865) 1 Nev. *319. For this reason also, the petitioner in the instant case, having fulfilled the condition precedent by serving eight years, was eligible to parole.

PARTNERSHIP—BANKRUPTCY—EFFECT ON MEMBERS OF DISCHARGE OF PARTNERSHIP.—The plaintiffs got judgments against a partnership which was later declared bankrupt. The defendant, one of the partners, conveyed property to his wife, the other defendant, in fraud of creditors. In a suit to subject the property of the defendants to satisfy the judgments, *held,* one judge dissenting, the discharge of a partnership has no effect upon the individual liability of the partners. *Moore Dry Goods Co.* v. *Ford* (Ark. 1920) 225 S. W. 320.

The Bankruptcy Act of 1898, §§ 1, 5, adopted the theory that a partnership is an entity. It is therefore not surprising that some courts have taken the view that a partnership may be insolvent and may be adjudged bankrupt although its members are solvent. *In re Bertenshaw* (C. C. A. 8th Cir. 1907) 157 Fed. 363. However, since the members are liable *in solido* for the debts of the partnership, other courts have taken the more rational view that so long as any member has assets enough to pay both his individual and the firm debts, the partnership cannot be adjudicated bankrupt. *Vaccaro* v. *Security Bank* (C. C. A. 6th Cir. 1900) 103 Fed. 436. In an able opinion, Mr. Justice Holmes recognized the latter to be the sound view, thus settling the law. *Francis* v. *McNeal* (1913) 228 U. S. 695, 33 Sup. Ct. 701; *In re Samuels* (C. C. A. 1914) 215 Fed. 845. Since the members must necessarily be drawn into any bankruptcy proceeding against the partnership, see *Armstrong* v. *Norris* (C. C. A. 1917) 247 Fed. 253, it follows that a discharge of the firm must involve a discharge of the members. *Abbott* v. *Anderson* (1914) 265 Ill. 285, 106 N. E. 782. Notwithstanding these decisions, the court in the case of *Horner* v. *Hamner* (C. C. A. 1918) 249 Fed. 134, decided that the failure of a partnership to apply for a discharge in proceedings against it, which has the same effect as if a discharge had been denied, did not bar a member from obtaining subsequently an individual discharge of the same partnership liabilities. The court in the instant case purports to follow *Horner* v. *Hamner, supra,* and reaches what is believed to be an unsound conclusion.

RAILROADS—CROSSINGS—DUTY TO STOP, LOOK, AND LISTEN.—The plaintiff sued for injuries sustained when his automobile was struck by a train at a railroad crossing. High bushes at the side of the road obstructed the view along the track and no signal by bell or whistle was given. The plaintiff, who was driving, slowed up before attempting to cross. The defendant set up the plaintiff's failure to stop as contributory negligence, and this question was submitted to the jury who found for the plaintiff. On appeal it was *held,* two judges dissenting, that there was no error. The plaintiff's failure to stop was not contributory negligence *per se,* the "Stop, Look, Listen" sign merely imposing the duty to use ordinary care. *Perry* v. *McAdoo, Director General* (N. C. 1920) 104 S. E. 673.

On almost identical facts, a lower court charged that if the plaintiff looked and listened, he was not guilty of contributory negligence. The jury found for

the plaintiff. On appeal it was *held,* two judges dissenting, that this charge was error, for the plaintiff in addition should have stopped his car if an ordinarily prudent man would have done so. *Kimbrough* v. *Hines, Director General* (N. C. 1920) 104 S. E. 684.

In two jurisdictions, failure to stop before attempting to cross is negligence *per se. Hines, Director General* v. *Cooper* (Ala. 1920) 86 So. 396; see *Paul* v. *Philadelphia & R. Ry.* (1911) 231 Pa. St. 338, 80 Atl. 365. This view places too great a restriction upon the privilege of the public in using the highways. Other states impose the duty to stop where the view is obstructed. See *Chase* v. *Maine Central Ry.* (1897) 167 Mass. 383, 45 N. E. 911. But by the majority rule, the duty to stop is not absolute, like the duty to look and listen, but arises only if the view is obstructed and the hearing hindered so that a reasonably prudent man would have stopped. *Lake Erie & W. Ry.* v. *Schneider* (C. C. A. 1919) 257 Fed. 675; *Judson* v. *Central Vt. Ry.* (1899) 158 N. Y. 597, 53 N. E. 514; *St. Louis-San Francisco Ry.* v. *Stewart* (1918) 137 Ark. 6, 207 S. W. 440; *Dail* v. *Atlantic Coast Line Ry.* (1918) 176 N. C. 112, 96 S. E. 734. Under this rule contributory negligence is usually a question for the jury. See Elliott, *Railroads* (1897) § 1167. But the surrounding circumstances may be such as to justify the direction of a verdict. *Shatto* v. *Erie Ry.* (C. C. A. 1903) 121 Fed. 678; *Missouri, K. & T. Ry.* v. *Jenkins* (1906) 74 Kan. 487, 87 Pac. 702. This majority view seems best to reconcile the conflicting interests of the railroads in the use of their tracks and of the public in the use of the highways. But because of the jury's tendency to hold the railroad liable, the court should not be backward in directing a verdict.

SEARCHES AND SEIZURES—EVIDENCE ILLEGALLY OBTAINED—RETURN OF PROPERTY SEIZED.—Distilling apparatus, mash for distillation and intoxicating liquor, owned and manufactured by the defendant, were seized under an insufficient search warrant. On motion by the defendant for the return of the property, *held,* that the property was contraband and would not be returned. *United States* v. *Rykowski* (D. C. S. D. Ohio 1920) 267 Fed. 866.

In addition to the holding announced by the court in the principal case, it was ruled, in accordance with what may now be deemed the settled federal rule, that since the defendant promptly applied for the return of the property improperly seized, that property could not be used as evidence against him in a prosecution for illicit operation of stills. *Silverthorne Lumber Co.* v. *United States* (1920) 251 U. S. 385, 40 Sup. Ct. 182; (1920) 20 COLUMBIA LAW REV. 484; also, *State* v. *Marxhausen* (1919) 204 Mich. 559, 171 N. W. 557, 573 (*semble*). Yet the evidence thus improperly obtained was just as necessary to sustain the government's action in depriving the defendant of his property in the articles seized as it would have been to convict him personally. Unless the illegality of the defendant's possession could be proved, the government's action was a mere conversion. To say that property obtained under an insufficient warrant, though inadmissible as evidence in a prosecution of the defendant as violative of his constitutional rights under the Fourth Amendment, may yet be used to deprive him of the property, is not only inconsistent with reason and policy, but is against what little authority there is. *State* v. *Marxhausen, supra; Silverthorne Lumber Co.* v. *United States, supra,* 391. That the decision in the instant case cannot be supported on the ground of public welfare, is simply and effectively proclaimed in the following quotation: "These rights of the individual in his person and property should be held sacred, and any attempt to fritter them away under the guise of enforcing drastic sumptuary legislation (no matter how beneficial to the people it may be claimed to be) must meet